

rejection because the conflicting claims have not in fact been patented.

### **RESPONSE**

Applicant submits herewith a Terminal Disclaimer to co-pending U.S. Patent Application Serial No. 10/518,692. Accordingly, Applicant respectfully requests the Examiner to withdraw the current rejection.

### **2. Double Patenting Rejection**

The Office Action states,

Claims 1-11 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-9 of copending Application No. 10/499,182 (US 2006/0047071). Although the conflicting claims are not identical, they are not patentably distinct from each other because the compositions are identically claimed. Claims 1, 7 and 10 recite melt flow rates, intrinsic viscosity values and monomer ratios that would be embraced by the reference compositions, as shown by the reference claims 2-5.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### **RESPONSE**

Applicant respectfully traverses the rejection of claims 1-11.

Since the analysis employed in an obviousness-type double patenting determination parallels the guidelines for a 35 U.S.C. §103(a) rejection, the factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for

establishing a background for determining obviousness under 35 U.S.C. §103 are employed when making an obvious-type double patenting analysis. These factual inquiries are summarized as follows:

- (A) Determine the scope and content of a patent claim relative to a claim in the application at issue;
- (B) Determine the differences between the scope and content of the patent claim as determined in (A) and the claim in the application at issue;
- (C) Determine the level of ordinary skill in the pertinent art; and
- (D) Evaluate any objective indicia of nonobviousness.

The conclusion of obviousness-type double patenting is made in light of these factual determinations.

Additionally, any obviousness-type double patenting rejection should make clear:

- (A) The differences between the subject matter defined by the conflicting claims - a claim in the cited document compared to a claim in the application; and
- (B) The reasons *why* a person of ordinary skill in the art would conclude that the subject matter defined in the claim at issue is anticipated by, or would have been an obvious variation of, the subject matter defined in a claim in the cited document.

Moreover, when considering whether the subject matter defined in a claim of an application would have been an obvious variation of the subject matter defined in the claim of a patent, or another patent application, the disclosure of the patent or other patent application may not be used as prior art. *General Foods Corp. v. Studiengesellschaft Kohle mbH*, 972 F.2d 1272, 1279, 23 USPQ2d 1839, 1846 (Fed. Cir. 1992), (Emphasis added).

With respect to the current rejection, currently pending claims 1-6 and 11 are directed towards polyolefin compositions; claims 7-9 are directed towards a process; and claim 10 is directed towards injection moulded articles. All currently pending claims (i.e., claims 1-11) are submitted herewith as ATTACHMENT A.

With respect to U.S. Patent Application Serial No. 10/499,182, currently pending claims 1, 3, and 5 are directed towards polyolefin compositions; and claim 9 is directed towards injection moulded articles. All currently pending claims (i.e., claims 1, 3, 5, and 9) for U.S. Patent Application Serial No. 10/499,182 are attached herewith as ATTACHMENT B.

Currently pending claims 1-6 and 11:

Claim 1 of the current application recites,

Polyolefin compositions comprising, in percent by weight based on a total weight of the polyolefin compositions:

- 1) 55-80% of a crystalline propylene homopolymer or copolymer containing up to 15% of at least one of ethylene and C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s) and having a MFR value (230 °C, 2.16 kg) of at least 15 g/10 min; and

2) 20-45% of a copolymer of ethylene with at least one of C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s) containing from 10 to 40% of said C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s);

said compositions having MFR (230 °C, 2.16 kg) values of at least 15 g/10 min, a total content of ethylene of 20% or more, a total content of C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s) of 4.5% or more, a ratio of the total content of ethylene to the total content of C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s) of 2.3 or more, and an intrinsic viscosity value of a fraction soluble in xylene at room temperature of at most 1.7 dl/g.

Currently pending claim 1 of U.S. Patent Application Serial No. 10/499,182 recites,

Polyolefin compositions comprising, in percent by weight based on a total weight of the polyolefin compositions:

1) 55%-90% of a crystalline propylene homopolymer or copolymer containing up to 15% of ethylene and/or C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s); and

2) 10%-45% of a blend of a copolymer of propylene with more than 15% up to 40% of ethylene (copolymer (a)), and a copolymer of ethylene with 10% to 40% of one or more C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s) (copolymer (b)), wherein the weight ratio (a)/(b) is from 1/4 to 4/1,

wherein the polyolefin compositions comprise melt flow rate values (230°C, 2.16Kg) equal to or higher than 4 g/10 min, and a content of polymer soluble in xylene at room temperature of less than 25%.

First and foremost, Applicant respectfully traverses the Examiner's assertion on page 3, lines 3-5, of the current Office Action which states,

Although the conflicting claims are not identical, they are not patentably distinct from each other because the compositions are identically claimed.

In particular, Applicant respectfully believes the current application claims, in part, polyolefin compositions comprising:

55-80% of component 1), which is a crystalline propylene homopolymer or copolymer, with the copolymer comprising up to 15% of at least one of ethylene and C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s), and component 1) comprising a MFR value of at least 15 g/10 min;

20-45% of component 2), which is a copolymer of ethylene comprising from 10 to 40% of at least one C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s);

wherein the polyolefin compositions comprise:

- (i) MFR (230 °C, 2.16 kg) values of at least 15 g/10 min;
- (ii) a total content of ethylene of 20% or more;
- (iii) a total content of C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s) of 4.5% or more;
- (iv) a ratio of the total content of ethylene to the total content of C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s) of 2.3 or more; and
- (v) an intrinsic viscosity value of a fraction soluble in xylene at room temperature of at most 1.7 dl/g.

However, U.S. Patent Application Serial No. 10/499,182 currently claims polyolefin compositions comprising a different component 1), a different component 2), and different final properties.

In particular, component 1) of U.S. Patent Application Serial No. 10/499,182, does not recite a MFR value; component 2) comprises two sub-components (i.e., copolymer (a) and copolymer (b) in a weight ratio of 1/4 to 4/1), whereas component 2) in the current application comprises a copolymer of ethylene; and the final

polyolefin composition comprises different final properties. Accordingly, Applicant respectfully believes the compositions are not "identically claimed" as purported by the Examiner.

Additionally, Applicant traverses the current rejection given the Examiner has not made clear: (A) the differences between the subject matter defined by the conflicting claims; and (B) *why* a person of ordinary skill in the art would conclude that the subject matter defined in the currently rejected claims are anticipated by, or would have been an obvious variation of, the subject matter defined in a claim in the cited U.S. Patent Application. However, this is the Examiner's initial burden in satisfying a *prima facie* case of non-statutory, obviousness-type double patenting. See MPEP §804 (1). As such, notwithstanding the above, Applicant respectfully believes for this reason alone the rejection should be withdrawn.

With respect to claims 2-6 and 11, each of the aforementioned claims depends directly or indirectly from currently pending claim 1, and necessarily includes all of the limitations therein.

As such, Applicant respectfully believes claims 1-6 and 11 are patentably distinct from claims 1, 3, 5, and 9 in U.S. Patent Application Serial No. 10/499,182.

Currently pending claims 7-9:

Claim 7 of the current application recites,

A process for producing polyolefin compositions, which

comprise in percent by weight, based on a total weight of the polyolefin compositions:

1) 55-80% of a crystalline propylene homopolymer or copolymer containing up to 15% of at least one of ethylene and C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s) and having a MFR value (230 °C, 2.16 kg) of at least 15 g/10 min; and

2) 20-45% of a copolymer of ethylene with at least one of C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s) containing from 10 to 40% of said C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s);

said compositions having MFR (230 °C, 2.16 kg) values at least 15 g/10 min, a total content of ethylene of 20% or more, a total content of C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s) of 4.5% or more, a ratio of the total content of ethylene to the total content of C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s) of 2.3 or more, and an intrinsic viscosity value of a fraction soluble in xylene at room temperature of at most 1.7 dl/g; the process being carried out in at least two sequential steps, wherein in at least one polymerization step the relevant monomer(s) are polymerized to form component 1) and in the other step the relevant monomers are polymerized to form component 2), operating in each step, except the first step, in the presence of the polymer formed and the catalyst used in the preceding step.

Applicant respectfully believes none of claims 1, 3, 5, and 9 in U.S. Patent Application Serial No. 10/499,182 recite the same, or an obvious variant, of currently pending claim 7. In fact, at the time of this response, U.S. Patent Application Serial No. 10/499,182 does not recite any process claims.

Notwithstanding this fact, Applicant respectfully traverses the current rejection given the Examiner has not made clear: (A) the differences between the subject matter defined by the conflicting claims; and (B) why a person of ordinary skill in the art would conclude that the subject matter defined in the currently rejected claims are anticipated by, or would have been an obvious variation

of, the subject matter defined in a claim in the cited U.S. Patent Application. However, this is the Examiner's initial burden in satisfying a *prima facie* case of non-statutory, obviousness-type double patenting. See MPEP §804 (1). As such, notwithstanding the above, Applicant respectfully believes for this reason alone the rejection should be withdrawn.

With respect to claims 8-9, each of the aforementioned claims depends directly or indirectly from currently pending claim 7, and necessarily includes all of the limitations therein.

As such, Applicant respectfully believes claims 7-9 are patentably distinct from claims 1, 3, 5, and 9 in U.S. Patent Application Serial No. 10/499,182.

Currently pending claim 10:

Claim 10 of the current application recites,

Injection moulded articles comprising polyolefin compositions, which comprise in percent by weight, based on a total weight of the polyolefin compositions:

1) 55-80% of a crystalline propylene homopolymer or copolymer containing up to 15% at least one of ethylene and C<sub>4</sub>-C<sub>10</sub> α-olefin(s) and having a MFR value (230 °C, 2.16 kg) of at least 15 g/10 min; and

2) 20-45% of a copolymer of ethylene with at least one of C<sub>4</sub>-C<sub>10</sub> α-olefin(s) containing from 10 to 40% of said C<sub>4</sub>-C<sub>10</sub> α-olefin(s);

said compositions having MFR (230 °C, 2.16 kg) values at least 15 g/10 min, a total content of ethylene of 20% or more, a total content of C<sub>4</sub>-C<sub>10</sub> α-olefin(s) of 4.5% or more, a ratio of the total content of ethylene to the total content of C<sub>4</sub>-C<sub>10</sub> α-olefin(s) of 2.3 or more, and an



intrinsic viscosity value of a fraction soluble in xylene at room temperature of at most 1.7 dl/g.

As with claim 1, Applicant respectfully traverses the Examiner's assertion on page 3, lines 3-5, of the current Office Action which states,

Although the conflicting claims are not identical, they are not patentably distinct from each other because the compositions are identically claimed.

In particular, Applicant respectfully believes claim 10 recites, in part, injection moulded articles comprising polyolefin compositions comprising:

55-80% of component 1), which is a crystalline propylene homopolymer or copolymer, with the copolymer comprising up to 15% of at least one of ethylene and C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s), and component 1) comprising a MFR value of at least 15 g/10 min;

20-45% of component 2), which is a copolymer of ethylene comprising from 10 to 40% of at least one C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s);

wherein the polyolefin compositions comprise:

- (i) MFR (230 °C, 2.16 kg) values of at least 15 g/10 min;
- (ii) a total content of ethylene of 20% or more;
- (iii) a total content of C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s) of 4.5% or more;
- (iv) a ratio of the total content of ethylene to the total content of C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s) of 2.3 or more; and
- (v) an intrinsic viscosity value of a fraction soluble in xylene at room temperature of at most 1.7 dl/g.

However, claim 9 of U.S. Patent Application Serial No. 10/499,182 currently claims injection moulded articles comprising polyolefin compositions comprising a different component 1), a different component 2), and different final properties.

In particular, component 1) of claim 9 of U.S. Patent Application Serial No. 10/499,182, does not recite a MFR value; component 2) comprises two sub-components (i.e., copolymer (a) and copolymer (b) in a weight ratio of 1/4 to 4/1), whereas component 2) in claim 10 of the current application comprises a copolymer of ethylene; and the final polyolefin composition of the injection moulded article comprises different final properties. Accordingly, Applicant respectfully believes neither the compositions, nor the injection moulded articles, are "identically claimed" as purported by the Examiner.

Additionally, as with claim 1, Applicant traverses the current rejection given the Examiner has not made clear: (A) the differences between the subject matter defined by the conflicting claims; and (B) why a person of ordinary skill in the art would conclude that the subject matter defined in the currently rejected claims are anticipated by, or would have been an obvious variation of, the subject matter defined in a claim in the cited U.S. Patent Application. However, this is the Examiner's initial burden in satisfying a *prima facie* case of non-statutory, obviousness-type double patenting. See MPEP §804 (1). As such, notwithstanding the

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above, Applicant respectfully believes for this reason alone the rejection should be withdrawn.

As such, Applicant respectfully believes claim 10 is patentably distinct from claims 1, 3, 5, and 9 in U.S. Patent Application Serial No. 10/499,182.

### CONCLUSION

Based upon the above remarks, the presently claimed subject matter is believed to be novel and patentably distinguishable over the prior art of record. The Examiner is therefore respectfully requested to reconsider and withdraw all the rejections, and allow all pending claims 1-11. Favorable action with an early allowance of the claims pending in this application is earnestly solicited.

The Examiner is welcomed to telephone the undersigned practitioner with any questions or comments if it is believed such contact will expedite prosecution for this application.

Respectfully submitted,

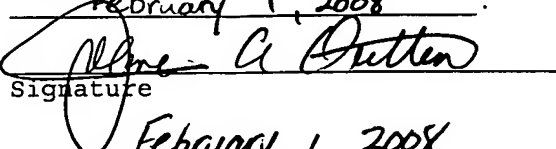
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February 1, 2008  
Date



ATTACHMENT A

1. (Previously presented): Polyolefin compositions comprising, in percent by weight based on a total weight of the polyolefin compositions:

- 1) 55-80% of a crystalline propylene homopolymer or copolymer containing up to 15% of at least one of ethylene and C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s) and having a MFR value (230 °C, 2.16 kg) of at least 15 g/10 min; and
- 2) 20-45% of a copolymer of ethylene with at least one of C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s) containing from 10 to 40% of said C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s);

said compositions having MFR (230 °C, 2.16 kg) values of at least 15 g/10 min, a total content of ethylene of 20% or more, a total content of C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s) of 4.5% or more, a ratio of the total content of ethylene to the total content of C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s) of 2.3 or more, and an intrinsic viscosity value of a fraction soluble in xylene at room temperature of at most 1.7 dl/g.

2. (Previously presented): The polyolefin compositions according to claim 1 comprising, in percent by weight based on a total weight of the polyolefin compositions:

- 1) 55-75% of a crystalline propylene homopolymer or copolymer containing up to 15% of at least one of ethylene and C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s) and having a MFR from 15 to 80 g/10 min; and
- 2) 25-45% of a copolymer of ethylene with at least one of C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s) containing from 20 to 40% of said C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s);

said compositions having MFR (230 °C, 2.16 kg) values at least 15 g/10 min, a total content of ethylene of 20% or more, a total content of C<sub>4</sub>-C<sub>10</sub> α-olefin(s) of 6% or more, a ratio of the total content of ethylene to the total content of C<sub>4</sub>-C<sub>10</sub> α-olefin(s) of 2.3 or more, a total fraction soluble in xylene at room temperature of 18 wt% or higher, and an intrinsic viscosity value of the fraction soluble in xylene at room temperature of at most 1.7 dl/g.

3. (Previously presented): The polyolefin compositions of claim 1, having MFR values of at least 30 g/10 min.

4. (Original): The polyolefin compositions of claim 1, wherein the intrinsic viscosity of the fraction soluble in xylene at room temperature is in the range from 0.8 to 1.5 dl/g.

5. (Previously presented): The polyolefin compositions of claim 1, wherein the fraction soluble in xylene at room temperature is higher than 20%.

6. (Previously presented): The polyolefin compositions of claim 1, having a ductile/brittle transition temperature of at most 35 °C.

7. (Previously presented): A process for producing polyolefin compositions, which comprise in percent by weight, based on a total weight of the polyolefin compositions:

- 1) 55-80% of a crystalline propylene homopolymer or copolymer containing up to 15% of at least one of

ethylene and C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s) and having a MFR value (230 °C, 2.16 kg) of at least 15 g/10 min; and

- 2) 20-45% of a copolymer of ethylene with at least one of C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s) containing from 10 to 40% of said C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s);

said compositions having MFR (230 °C, 2.16 kg) values at least 15 g/10 min, a total content of ethylene of 20% or more, a total content of C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s) of 4.5% or more, a ratio of the total content of ethylene to the total content of C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s) of 2.3 or more, and an intrinsic viscosity value of a fraction soluble in xylene at room temperature of at most 1.7 dl/g, the process being carried out in at least two sequential steps, wherein in at least one polymerization step the relevant monomer(s) are polymerized to form component 1) and in the other step the relevant monomers are polymerized to form component 2), operating in each step, except the first step, in the presence of the polymer formed and the catalyst used in the preceding step.

8. (Previously presented): The process of claim 7, wherein the polymerization catalyst is a stereospecific Ziegler-Natta catalyst comprising, as catalyst-forming components, a solid component comprising a titanium compound having at least one titanium-halogen bond and an electron-donor compound, both supported on a magnesium halide in active form, and an organoaluminum compound.

9. (Previously presented): The process of claim 7, wherein both components 1) and 2) are prepared in gas phase.

10. (Previously presented): Injection moulded articles comprising polyolefin compositions, which comprise in percent by weight, based on a total weight of the polyolefin compositions:

- 1) 55-80% of a crystalline propylene homopolymer or copolymer containing up to 15% at least one of ethylene and C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s) and having a MFR value (230 °C, 2.16 kg) of at least 15 g/10 min; and
- 2) 20-45% of a copolymer of ethylene with at least one of C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s) containing from 10 to 40% of said C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s);

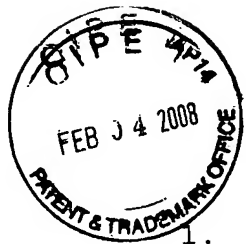
said compositions having MFR (230 °C, 2.16 kg) values at least 15 g/10 min, a total content of ethylene of 20% or more, a total content of C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s) of 4.5% or more, a ratio of the total content of ethylene to the total content of C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s) of 2.3 or more, and an intrinsic viscosity value of a fraction soluble in xylene at room temperature of at most 1.7 dl/g.

11. (Previously presented): The polyolefin compositions according to claim 2 comprising, in percent by weight based on a total weight of the polyolefin compositions:

- 1) 55-70% of a crystalline propylene homopolymer or copolymer containing up to 15% of at least one of ethylene and C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s) and having a MFR value of from 15 to 80 g/10 min; and
- 2) 30-45% of a copolymer of ethylene with at least one of C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s) containing from 20 to 40% of said C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s);



said compositions having values of MFR (230 °C, 2.16 kg) equal to or higher than 15 g/10 min, a total content of ethylene of 20% or more, a total content of C<sub>4</sub>-C<sub>10</sub> α-olefin(s) of 6% or more, a ratio of the total content of ethylene to the total content of C<sub>4</sub>-C<sub>10</sub> α-olefin(s) of 2.3 or more, a total fraction soluble in xylene at room temperature of 18 wt% or higher, and an intrinsic viscosity value of a fraction soluble in xylene at room temperature of at most 1.7 dl/g.



ATTACHMENT B

1. (Previously presented): Polyolefin compositions comprising, in percent by weight based on a total weight of the polyolefin compositions:

- 1) 55%-90% of a crystalline propylene homopolymer or copolymer containing up to 15% of ethylene and/or C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s); and
- 2) 10%-45% of a blend of a copolymer of propylene with more than 15% up to 40% of ethylene (copolymer (a)), and a copolymer of ethylene with 10% to 40% of one or more C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s) (copolymer (b)), wherein the weight ratio (a)/(b) is from 1/4 to 4/1,

wherein the polyolefin compositions comprise melt flow rate values (230°C, 2.16Kg) equal to or higher than 4 g/10 min, and a content of polymer soluble in xylene at room temperature of less than 25%.

2. (Cancelled)

3. (Previously presented): The polyolefin compositions of claim 1, wherein the intrinsic viscosity of the fraction soluble in xylene at room temperature is in the range from 0.8 to 2.5 dl/g.

4. (Cancelled)

5. (Original): The polyolefin compositions of claim 1, having a Ductile/Brittle transition temperature equal to or lower than -25 °C.

6. (Cancelled)

7. (Cancelled)

8. (Cancelled)

9. (Previously presented): Injection moulded articles comprising polyolefin compositions which comprise, in percent by weight based on a total weight of the polyolefin compositions:

- 1) 55%-90% of a crystalline propylene homopolymer or copolymer containing up to 15% of ethylene and/or C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s); and
- 2) 10%-45% of a blend of a copolymer of propylene with more than 15% up to 40% of ethylene (copolymer (a)), and a copolymer of ethylene with 10% to 40% of one or more C<sub>4</sub>-C<sub>10</sub>  $\alpha$ -olefin(s) (copolymer (b)), wherein the weight ratio (a)/(b) is from 1/4 to 4/1,

wherein the polyolefin compositions comprise melt flow rate values (230°C, 2.16Kg) equal to or higher than 4 g/10 min, and a content of polymer soluble in xylene at room temperature of less than 25%.